



BILLING CODE 8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96296; File No. SR-NYSEAMER-2022-51]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update and Harmonize the Exchange's Reimbursement Schedule for Forwarding Proxy and Other Issuer Material

November 10, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 4, 2022, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE American Rules 576, 585, 451 - Equities and 465 - Equities, and the related provisions of Section 722 of the NYSE American Company Guide (the "Company Guide"), which provide a schedule for the reimbursement of expenses by issuers to NYSE American member organizations for the processing of proxy materials and other issuer communications provided to investors holding securities in street name.⁴ The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

⁴ The Exchange notes that the proposed schedule for the reimbursement of expenses was first adopted by the New York Stock Exchange and FINRA in 2014 and has been applied industry wide since that time, as intended. See, *infra*, Footnote 5. This rule proposal does not propose any changes to that schedule. Instead, this proposal seeks only to make conforming changes to the Exchange's rules and the Company Guide.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE American Rules 576, 585, 451 - Equities and 465 - Equities, and the related provisions of Section 722 of the NYSE American Company Guide, which provide a schedule for the reimbursement of expenses by issuers to NYSE American member organizations for the processing of proxy materials and other issuer communications provided to investors holding securities in street name. The proposed amendments to Rules 576, 585, 451 - Equities and 465 - Equities and Section 722 of the Company Guide will conform NYSE American’s reimbursement schedule to one previously adopted by the New York Stock Exchange LLC (the “NYSE”).⁵ The NYSE adopted the changes to its reimbursement schedule upon the recommendation of the Proxy Fee Advisory Committee (“PFAC” or the “Committee”) which was formed in 2010 to review the then-existing fee structure and report its findings to the NYSE.⁶

The Exchange notes that Rules 576 and 585 duplicate Rules 451 - Equities and 465 - Equities. Rules 576 and 585 appear in the “Office Rules” section of the NYSE American Rule Book and are legacy to the American Stock Exchange LLC (a predecessor

⁵ See Securities Exchange Act Release No. 70720, October 18, 2013, 78 FR 63530, October 24, 2013, approving SR-NYSE-2013-07 (the “NYSE Approval Order”) and Securities Exchange Act Release No. 71273, January 9, 2014, 79 FR 2702, January 15, 2014 (SR-NYSE-2013-83). FINRA has adopted a fee structure identical to the schedule that was adopted by the NYSE. See Securities Exchange Act Release No. 71272, January 9, 2014, 79 FR 2741, January 15, 2014 (SR-FINRA-2013-056).

⁶ The NYSE Approval Order contained discussion, and corresponding rule text, related to enhanced brokers’ internet platforms. The Exchange is not proposing to adopt the portion of NYSE Rule 451 related to the Enhanced Brokers’ Internet Platform Fee as that fee expired in 2018 and is no longer relevant.

entity to the Exchange; references hereafter to the Exchange will refer to the American Stock Exchange LLC or NYSE American LLC, as applicable). NYSE Euronext, the then-owner of the NYSE, acquired the Exchange in 2008. In connection with that acquisition, trading in securities listed on the Exchange was transferred onto the trading platform used by the NYSE. To facilitate that transfer, the Exchange adopted certain NYSE equity trading rules, including Rules 451 - Equities and 465 - Equities, which appear in the “Equities Rules” section of the NYSE American Rule Book.⁷ To eliminate confusion, the Exchange proposes to adopt the proposed revised schedule for reimbursement in Rules 451 - Equities (which corresponds to the comparable NYSE rule) and amend Rules 576, 585 and 465 - Equities to provide a cross reference to the applicable provisions of Rule 451 - Equities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”) generally.⁸ Section 6(b)(4)⁹ requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5)¹⁰ requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair

⁷ SEC Release No. 58705, October 1, 2008, 73 FR 58995, October 8, 2008, approving SR-Amex-2008-63.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

discrimination between issuers, brokers or dealers. Section 6(b)(8)¹¹ prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

As amended, Rules 576, 585, 451 - Equities and 465 - Equities will be substantively identical to NYSE Rules 451 and 465 and FINRA Rule 2251. The Commission has previously found that NYSE Rules 451 and 465 and FINRA Rule 2251 are consistent with Section 6(b) of the Act, generally, and Sections 6(b)(4) and 6(b)(5), in particular.¹² As the proposed amendments to Rules 576, 585, 451 - Equities and 465 - Equities will simply conform such rules to the corresponding, and previously approved, rules of the NYSE and FINRA, the Exchange believes that its proposal is consistent with Section 6(b) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that Rules 576, 585, 451 - Equities and 465 - Equities as amended by the proposed amendments do not impose any burdens on competition. As amended, Rules 576, 585, 451 - Equities and 465 - Equities will be substantively identical to NYSE Rules 451 and 465 and FINRA Rule 2251. The Commission has previously found that NYSE Rules 451 and 465 and FINRA Rule 2251 do not impose any burden on competition.¹³ Therefore, the Exchanges believes that the amendments to NYSE Rules 451 and 465 and FINRA Rule 2251 will similarly not impose any burden on competition.

¹¹ 15 U.S.C. 78f(b)(8).

¹² See, supra, Footnote 5.

¹³ Id.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

will not significantly affect the protection of investors and the public interest because it will ensure regulatory clarity and harmonization with respect to proxy rate reimbursement. Further, the Exchange states the proposed schedule of reimbursement is already being applied industry-wide and this proposal seeks only to conform the Exchange's rules with those of NYSE and FINRA. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2022-51 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2022-51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2022-51 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2022-24957 Filed: 11/15/2022 8:45 am; Publication Date: 11/16/2022]

¹⁹ 17 CFR 200.30-3(a)(12).